am of the view that these two heads of claim should go for arbitration and that there should be a stay of proceedings in respect of those two heads of claim.

Mr. Giam says that the defendants should be ordered to provide security in the sum of $9,000,000.00 in respect of these two heads of claim amounting to $16,949,572.00.

The Court's power to impose conditions when granting leave to defend is expressly provided for under Order 14. But where the Court grants a stay of proceedings under section 7 of the Arbitration Act no such power is provided at all.

Mr. Giam relies on *In re Bjornstad and Anor. and The Ouse Shipping Company, Limited.*[2] In that case two Norwegian subjects made contracts with an English shipbuilding firm for the purchase of four ships. Each contract contained an arbitration clause. The contracts are English contracts and the Norwegians have provided an agent in England on whom process may be served. They have dissolved partnership; and they desire to proceed to arbitration on the contract in England. The shipbuilders refuse to appoint any arbitrator and the Norwegians apply to the Court to appoint an arbitrator under section 5 of the Arbitration Act, 1889.

The master made an order appointing an arbitrator. The shipbuilders appealed and applied for an order that the purchasers should give security for costs. Talbot J. dismissed the appeal but gave leave to appeal to the Court of Appeal. It was held that on an application under section 5 of the Arbitration Act, 1889, to appoint an arbitrator the Court has a discretion whether it should or should not make the appointment and the Court has power to order security for costs of the arbitration.

That case does not help the plaintiffs. It is not a case of an application for judgment under Order 14 and furthermore the applicants in that case were foreigners out of the jurisdiction of the Court. If they were bringing an action they would as a matter of couse be ordered to give security for costs. The Court, therefore, refused to appoint an arbitrator until the necessary security was found.

The exercise of the jurisdiction to stay proceedings is discretionary, but if the Court is satisfied that there is no sufficient reason why the matter should not be referred to arbitration in accordance with the agreement the Court will seldom refuse a stay (Vol 2 *Halsbury's* 4th Ed. para 555). No authority has been cited by Mr. Giam where a stay of proceedings was granted on condition that the defendant provide security for the sum claimed when the party seeking the arbitration was not a foreigner.

I am of the view that in this case the stay of proceedings should be granted without condition.

In the result I set aside the two orders of the Senior Assistant Registrar made on the August 20, 1985, and I make the following orders:-

(1) On the application of the plaintiffs in Summons-in-Chambers No. 4208 of 1985 – final judgment be entered against the defendant for the sum of $4,519,181.00 and $700.00 costs and the balance of the plaintiffs' claim amounting to $16,949,572 be stayed pending arbitration.

(2) On the application of the defendants in Summons-in-Chambers No. 4446 of 1985 – all further proceedings in this action relating to the balance of the plaintiffs' claim amounting to $16,949,572 be stayed pursuant to section 7 of the Arbitration Act, Cap. 16.

I will now hear the parties on the question of costs and ancillary orders.

Order accordingly.

Solicitors: *Wee Swee Teow & Co.; Shook Lin & Bok.*

ONG MOH CHONG v. HITACHI CHEMICAL (S) PTE. LTD.

[O.C.J. (Rajah J.) February 19, 1986]

[Singapore – Suit No. 212 of 1982]

Tort – Negligence – Worker injured in the course of employment – Whether a safe system of work was provided.

Labour Law – Duty of employers to provide a safe system of work – Worker injured in course of employment – Breach of statutory obligation.

Damages – Fingers – Amputation of 3 fingers – Pain and suffering – Loss of future earnings – Quantum.

The plaintiff while working in the defendants' factory on a part-time basis as a machine operator was injured by

the machine that he was operating. As a result of the accident, the plaintiff suffered amputation of the right index finger, the right middle finger and the right ring finger. The plaintiff sues the defendants for injuries suffered by reason of the unsafe system of work/breach of statutory duty and/or negligence of the defendants their servants or agents. The plaintiff was a daily paid worker rated at $8.80 per day from Monday to Saturday. At the end of August 1985 his wages were to have been $9.26 per day.

Held: (1) the defendants were liable for the accident in that they had not provided a safe system of work as required by law of a factory operator;

(2) Damages were awarded as follows:

Special Damages (agreed)	$ 2,387.00
Damages for pain and suffering	$30,000.00
Damages for loss of future earnings	$45,000.00;

(3) interest would be paid at 6% from January 19, 1982 till March 22, 1985.

CIVIL SUIT.

Karuppan Chettiar (*M.P.H. Rubin* with him) for the plaintiff.

Robert Yap for the defendants.

Cur. Adv. Vult.

Rajah J.: The plaintiff, born in December 1953, joined his father's firm as a clerk in 1976 on a salary of $200/- per month. He married in 1976 and has one child born in December 1977. At the end of June 1981, when he was drawing a salary of $300/- a month, he, to supplement his income, made arrangements with the defendants, who were and are running a factory at 20 Bedok South Road, Singapore for the manufacture of printed circuit boards (PCB) to work for them as a machine operator. He continued to work for his father at the same time.

On weekdays he was to work from Monday to Friday from 5.00 pm to 11.00 pm and on Saturdays from 12 noon to 5.30 pm. Sundays were not working days for him but he could do so if he so desired in which event he would be paid double wages. He was a daily paid worker rated at $8.80 per day from Monday to Saturday. At the end of August 1985 his wages were to have been $9.26 per day.

He commenced work for the defendants on July 1, 1981 at 5.00 pm as a machine operator. He was asked to observe the other machine operators working on their respective machines. After two hours of such observation he was asked to operate a machine. At the defendants' factory there were several of such machines. His job was to blank pieces of printed circuit boards (PCB see PB5) each of which had 14 segments. First of all he puts on gloves made of cloth and each of his wrists is then strapped to a pull away device but before so doing he would have pre-heated the PCB in the oven (see PB4). He then places the pre-heated PCB on to the die of the power press machine between the guide pins, which operates to hold the PCB in position. Now there are two press buttons one on each side of the PCB and they are about 2 to 3 inches (4 fingers placed side by side) away from the die. If and when these two buttons are pressed simultaneously, but not otherwise, the punch ram which is about 10 inches above the die will move sharply in a downward direction and blank one of the segments of the PCB. Concurrent with the commencement of the descent of the punch the machine operates to draw the pull away device away from the area of the die and towards the operator. After blanking (punching) one of the segments of the PCB the punch ram returns automatically and immediately to its original position and remains there until the said two buttons are again pressed simultaneously. On its return to its original position the punch ram carries with it the blanked segment which falls from the punch ram soon after. Before it so falls off the operator would push the PCB to trap the blanked segment which is then put away. The operation is then started all over again by the simultaneous pushing of the said two buttons until all the 14 segments of the PCB are blanked. It will be noted that as the work progresses on the PCB it will be getting progressively shorter and the operator would have to adjust the PCB accordingly. When the operator gets to the last two segments of the PCB he can no longer use the board to retrieve the segments falling from the punch for which purpose the operator has to use one of his hands and in the case of the plaintiff it would be his right hand.

He continued doing the same work until July 18, 1981, which was a Saturday. He reported for duty at 12 noon. He worked on one of the machines at the factory until 3.00 pm when he says he was given another machine to continue his work of blanking pieces of PCB (but this is not accepted by the defence. They say he only worked on one machine that day and that it was the machine on which the accident occurred).

I will now let the plaintiff tell, in his own words, what happened (pp. 10 and 11 of Notes of Evidence):

"On the 18th July 1981 just before the accident I was

engaged on the last segment of the PCB. I placed the last segment in the guide pins on the die. I then depressed the two buttons simultaneously. The ram came down and punched the last segment adhering to the ram. The moment the ram came to a stop the last segment dropped. As it was dropping I placed my right hand below it in order to retrieve it. If I do not catch the segment before it falls it will drop onto the lower die. In this case I would still have to retrieve it with my right hand. While I was trying to retrieve the falling segment the ram came down suddenly and my fingers were crushed. (The ram was much larger than the size of the segment I was working on). I was surprised by this action.

For 18 days I had worked on machines like this but this was the first time that the ram came down without the two buttons being depressed. If I pressed one button accidentally the ram won't go down. If the ram comes after I had depressed the two buttons but with me still holding onto the buttons the ram would not injure my fingers as the buttons are 4 or 5 inches away from the line of descent of the ram. The pull away device would give me a jerk in a backward direction. I can't say how far back my hands would be pulled back. On that day I did not pay attention to the cord but I do remember the colour was not like these exhibits (P2 and D2). It looked like a soiled white rope. I did not tamper with the pull away device. It was set up by the company's set-up man. On that day the pull away device had been set up by the set-up man. I was taken to St Mark's Hospital. Report of Dr. R Sundarason (PB37)."

As a result of the accident the plaintiff suffered amputation of the right index finger, the right middle finger and the right ring finger and he now sues the defendants for injuries suffered by reason of the unsafe system of work/breach of statutory duty and/or negligence of the defendants their servants or agents.

Liability

There is no dispute as to how the accident occurred. It happened by the punch ram coming down on the plaintiff's right hand without his having pressed the two buttons simultaneously while he was retrieving the last punched segment of the printed board. The defendants evidence is that even if the ram was to "double punch", that is to say, the punch ram coming down twice in quick succession on just the single simultaneous push of the two buttons, the pull away safety device should and would come into operation simultaneously and pull the operator's hand away from the die area and so prevent an accident. As I understood the evidence the safe system provided for by the plaintiff was that the machine itself would and should not double punch but if for any reason the machine became faulty and did in fact double punch then the final fall back position on to the pull away safety device would come into instant operation simultaneously with the commencement of the fault and thus pull away the hands of the operator from the danger of an accident. In the instant case we do know that there was a double punch. I accept the evidence of the plaintiff that the ram came down without his having pushed the two buttons simultaneously. I therefore in the circumstances of this case conclude that the machine became faulty and for some unknown reason did a double punch. In these circumstances the accident could still have been avoided had the pull away safety device functioned as it was intended to. But we do know that it did not function because of the fact of the injury to the plaintiff's right hand. Why and how then did the pull away safety device fail? The defendants suggest, although they have no evidence to back it, that, perhaps, it was the plaintiff who had tampered with the device which resulted in its non function. On the other hand, the plaintiff categorically states that he did not tamper with the pull away device and he was not shaken on this although cross-examined by defence counsel. I accept the evidence of the plaintiff on this and reject the defendants suggestion particularly that of Ismail, the set-up man (DW4) that this accident could have been perhaps caused because the plaintiff had interfered with its safe operation. I therefore find the defendants liable for the accident in that they had not provided a safe system of work as required by law of a factory operator. In this I find support in the Industrial Officer's Report (PB1-3) and the defendant Investigation Committee's Report dated July 20, 1981.

On the question of damages suffered by the plaintiff as a result of the accident. On the special damages both parties have agreed it at $2,387/-. On the question of loss of earnings for the period of 52 months from November 1, 1981 to end of February 1986 I reject the plaintiff's claim as he took no steps to mitigate the damage. He did not go back to find out if his employer would employ him. I accept the evidence of the defendants that if the plaintiff had gone back to the defendants they would have taken him on in another capacity at the same pay.

On the question of damages for pain and suffering the sum is $30,000/-. As for loss of future of earnings I award him $45,000/-.

There will be interest at 6% from January 19, 1982 up till March 22, 1985. The sum on which interest will be paid is $2,387/- plus $30,000/- = $32,387/-. I also order that the sum of $7,417/- paid into Court by the defendants be paid out to

the solicitors for the plaintiff Messrs Amarjit Rubin & Partners.

Costs to the Plaintiff.

Order accordingly.

Solicitors: *Amarjit Rubin & Partners; Battenberg & Talma.*

BRITISH & MALAYAN TRUSTEES LTD. & ANOR. v. LIM BOON PIN & ORS.

[O.C.J. (Rajah J.) March 5, 1986]

[Singapore – Originating Summons No. 275 of 1984]

Trust and Trustees – Construction of testator's will – 15 shares in residuary trust funds – Death of legatee enjoying these shares – Question of devolution – Blood relation – Directions of court sought.

Probate and Administration – Will – Construction of – Directions of court sought.

In this originating summons, the plaintiffs, who are trustees of the Will of Lim Yew Teok (deceased), who died in Singapore on October 6, 1925, sought the directions of the court in the administration of the testator's estate under his Will dated August 22, 1925. The first defendant was the adopted son of the testator. The second defendant by the name of Lim Chui Ngor was the daughter of Lim Ah Kow, deceased, who was the natural son of the testator's daughter, Lim Chye Inn, but was described by the testator in the Will as "my infant grandson Lim Ah Kow the son of my deceased son Lim Geok Chai", who adopted Lim Ah Kow. The third defendant Lim Kee Suan was appointed by order of court to represent the class of persons interested as beneficiaries of the residuary trust funds under Clause 8 of the Will.

Under Clause 6 of the Will, the testator named a number of persons as his residuary legatees and the shares to which they were respectively entitled. The subject matter of this application concerns the 15 shares enjoyed by Chng Kiat Leng, who died a bachelor in 1983. These 15 shares formed a part of the 95 shares of income of the testator's residuary trust funds under Clause 6 of the Will. The principal issue for determination is whether the 15 shares enjoyed by Chng Kiat Leng (deceased) should pass on devolution to the first defendant Lim Boon Pin or Lim Chui Ngor (f).

Held: (1) the first defendant is neither a blood relation of Chng Kiat Leng nor is he a stirp or direct descendant of Lim Chye Inn (f). He therefore cannot succeed to the said 15 shares or any part thereof;

(2) on the death of the said Chng Kiat Leng, his 15 shares in the residuary trust fund of the testator passed to his niece Lim Chui Ngor.

Cases referred to:

(1) *British Malaya Trustee and Executor Co. Ltd. & Anor.* v. *Chan Mek Tuan & Ors.* [1937] M.L.J. 233.

(2) *Re Lim Yew Teok, Deceased; British Malaya Trustee and Executor Co. Ltd. & Anor.* v. *Chng Phee Lam & Ors.* [1948] M.L.J. 188.

(3) *Re Lim Yew Teok, Deceased; British Malaya Trustee Ltd.* v. *Chng Kiat Leng & Ors.* [1966] 2 M.L.J. 260, 262.

ORIGINATING SUMMONS.

S.H.D. Elias for the plaintiffs.

H.M. Dyne for the first defendant.

Eric Choa (*James Chia* with him) for the second defendant.

Tan Kok Quan for the third defendant.

Cur. Adv. Vult.

Rajah J.: This is an originating summons where the directions of the Court are being sought in the administration of a testator's estate.

The 1st plaintiffs are a trust company incorporated under the trust laws of Singapore and were appointed by the Court on January 15, 1937 in substitution for three of the original four surviving trustees of the will of Lim Yew Teok deceased. The 2nd plaintiff is a trustee of the said will appointed by the 1st plaintiffs under a Deed of Appointment dated October 22, 1984 in place of Chng Kiat Leng deceased jointly with themselves.

The 1st defendant, Lim Boon Pin, is an adopted son of the testator but is referred to by him in his will as his son. He is now the only surviving child of the testator (in the sense of that word in the will).

The 2nd defendant, Lim Chui Ngor, is the daughter of Lim Ah Kow deceased, who was the natural son of the Testator's daughter, Lim Chye Inn, but who had been given in adoption to the Testator's adopted son Lim Geok Chai deceased during the lifetime of the Testator and is described by the testator in Clause 6(4) of the will as "my infant grandson Lim Ah Kow the son of my deceased son Lim Geok Chai."

The 3rd defendant Lim Kee Suan was appointed under an Order of Court dated January 11, 1985 to represent the class of persons interested as beneficiaries of the residuary trust funds under Clause 8 of the will for the purpose of obtaining